

2011 DRAFTING REQUEST

Bill

Received: **10/07/2010**

Received By: **pkahler**

Wanted: **As time permits**

Companion to LRB:

For: **Steve Kestell (608) 266-8530**

By/Representing: **Connie Chesnik**

May Contact:

Drafter: **pkahler**

Subject: **Dom. Rel. - paternity**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kestell@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Administrative paternity

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 10/12/2010	jdye 10/14/2010		_____			S&L
/P1			phenry 10/15/2010	_____	mbarman 10/15/2010		S&L
/1	pkahler 01/07/2011 pkahler 02/03/2011	jdye 01/12/2011	jfrantze 01/12/2011	_____ _____ _____	sbasford 01/12/2011	lparisi 02/03/2011	

FE Sent For: "/1" @ intro. 3/8/11

<END>

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/1	pkahler 01/07/2011 pkahler	jdye 01/12/2011	jfrantze 01/12/2011	_____ _____ _____	sbasford 01/12/2011		

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Received By: pkahler

Wanted: As time permits

Companion to LRB:

For: Donna Seidel (608) 266-0654

By/Representing: Connie Chesnik

May Contact:

Drafter: pkahler

Subject: Dom. Rel. - paternity

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Seidel@legis.wisconsin.gov

Carbon copy (CC:) to:

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/1	pkahler 01/07/2011	jdye 01/12/2011	jfrantze 01/12/2011	_____	sbasford 01/12/2011		

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Received: **10/07/2010**

Received By: **pkahler**

Wanted: **As time permits**

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For: **Donna Seidel (608) 266-0654**

By/Representing: **Connie Chesnik**

May Contact:

Drafter: **pkahler**

Subject: **Dom. Rel. - paternity**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Seidel@legis.wisconsin.gov**

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Pre Topic:

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/P1		<i>1/11/12</i>	phenry 10/15/2010	<i>1/12</i>	mbarman 10/15/2010		

FE Sent For:

1/12
<END>
ph
mh

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Wanted: **As time permits**

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For: **Donna Seidel (608) 266-0654**

By/Representing: **Connie Chesnik**

May Contact:

Drafter: **pkahler**

Subject: **Dom. Rel. - paternity**

Addl. Drafters:

Extra Copies: **CJS**

Submit via email: **YES**

Requester's email: **Rep.Seidel@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

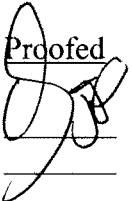
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/?	pkahler	P1 10/14 JLD	10/14				

FE Sent For:

<END>

Kahler, Pam

From: Chesnik, Connie - DCF [Connie.Chesnik@wisconsin.gov]
Sent: Thursday, October 07, 2010 12:38 PM
To: Kahler, Pam
Subject: FW: Administrative paternity legislation

Attachments: Paternity -- Administrative Process.doc; Paternity bill response.doc

Hi Pam,

We've been soliciting input on our administrative paternity legislation and have decided to make a couple changes to the draft to address the concerns we're hearing most. We have a meeting with our child support agency attorneys at the end of the month and I'm scheduled to talk about this so I was hoping you might have time to make these changes. I've spoken to Holly in Rep. Seidel's office and gotten their approval.

Shelley leaves Tues, 26th

I'm attaching to this email two letters from Bob Anderson and Carol Medaris so that you can see their comments and put these issues in context. They raise a number of other issues that I will address in my response to them but that we are not currently proposing any change to the draft to address.

These concerns were also raised by the Chief Judges and our proposed revisions should address them.

✓ First, we would like to eliminate the \$300 forfeiture provision that had been proposed for failure to comply with an administrative subpoena. It was intended only to create an additional incentive to comply with an administrative subpoena but has been interpreted as being coercive and we would like, therefore, to remove it.

Second, we received a number of comments expressing concern about the inability of the court to dismiss a paternity action in the best interests of the child if that action is commenced after someone objects to the results of a genetic test done in response to an administrative subpoena pursuant to the new provisions. Under current law, the court has the authority under s.767.855 to dismiss a paternity action in the best interests of the child only until the point that tests are done. (As an aside, I will note that this is an issue under current law as many counties do genetic tests pursuant to administrative subpoenas now prior to commencing a paternity action.)

To address this issue, we are proposing an amendment to s.767.855 that would expand the court's authority to dismiss a paternity action if adjudication was not in the child's best interest regardless whether genetic tests have been taken. I believe that was the interpretation of that section prior to a recent Court of Appeals decision in *Randy A.J. v. Norma A.J.*



Paternity -- Paternity bill
Administrative Pr... response.doc (3...

Feel free to call me to discuss.

Thanks,

Connie

2002 WI App 307

LRB → 09-4430

revised

270 W's 20 384

Connie M. Chesnik

Attorney

Department of Children and Families

ph: 608-267-7295

cell: 608-692-7379

fax: 608-261-6972

email: connie.chesnik@wisconsin.gov

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Attorney

Department of Children and Families

ph: 608-267-7295

cell: 608-692-7379

fax: 608-261-6972

email: connie.chesnik@wisconsin.gov

TO: Connie Chesnick
Attorney for the Department of Children and Families

FROM: Bob Andersen

RE: Proposed Administrative Paternity Legislation

DATE: July 8, 2010

As you know, I have been in favor of broad requirements for DNA testing in paternity actions for years. If I may dust off some material from some of my old memos, in support of the right to counsel in paternity actions, I will refer one more time to a study cited by the Indiana Supreme Court and the North Carolina Supreme Court:

“Professor Harry D. Krause’s study [H. Krause, *Illegitimacy: Law and Social Policy* pp. 107-108 (1979)] suggested the tremendous potential for erroneous adjudications of paternity. Krause’s research revealed that it is not uncommon for 95% of the paternity disputes to result in findings of parentage . . . Yet in a study based on 1000 cases, 39.6% of the accused men were conclusively shown by blood tests not to be the fathers. Of equal significance is another study in which 18% of a group of accused men who acknowledged paternity were proven by blood tests not to be the fathers of the children they acknowledged.” [Emphasis added] Kennedy v. Wood, 439 N.E. 2d at 1372 (1982) [Indiana].

For some more old material from my files, I have the following: Dr. Traver, an M.D. specializing in pathology and genetics, who was an expert witness for the state of Wisconsin in the use of HLA blood tests in paternity actions, told the 1986 Paternity subcommittee of the Legislative Council Committee on Employment Disincentives that 25% of the defendants alleged to be fathers are excluded by blood tests.

As you know, things have improved a lot since those times with the increased use of DNA testing. However, there still are problems that exist today. Since DNA testing is not required in cases of acknowledgment, the findings of the Krause study cited above would still seem to be relevant. For many other cases DNA testing is not ordered.

As you know, it is difficult to imagine any judgment in a civil or criminal action, with the exception of a criminal conviction for a long prison term, having as profound effect as it does on the lives of the people involved, because of what a paternity adjudication does –

- it establishes the natural and biological connection between father and child
- it establishes an obligation to pay child support for a child for 18 years
- it is the basis for the incarceration of a person at any time during the 18 years for non payment of support
- it establishes the right to receipt of social security and inheritance
- it establishes important information relating to medical history that is important for a child

Consequently, I have been in favor of mandatory DNA testing in judicial actions for the establishment of paternity.

However, there are some serious problems associated with the concept of mandatory DNA tests in an administrative process. At least one of the problems is insurmountable. That is the first problem described below.

I. **The Proposed Administrative Scheme Would Eliminate a Very Important Statutory Safeguard Against Establishing Paternity Where It is Against the Best Interest of the Child to Establish Paternity, Because the Father is a Dangerous Abuser or Is Otherwise a Very Bad Character.**

Section 767.855 of the statutes provides:

Dismissal if adjudication not in child's best interest. Except as provided in s. 767.863 (1m), at any time in an action to establish the paternity of a child, upon the motion of a party or guardian ad litem, the court or supplemental court commissioner under s. 757.675 (2)(g) may, with respect to a male, refuse to order genetic tests, if genetic tests have not yet been taken, and dismiss the action if the court or court commissioner determines that a judicial determination of whether the male is the father of the child is not in the best interest of the child. [Emphasis added].

I remember when this statute was created. It was one which was strongly supported by the legislature. There are some men whose behavior is so bad, that it is not in a child's best interest to have paternity established. This particularly applies in some cases of severe domestic and/or child abuse. It could apply in other cases, as well.

The problem with an administrative mandate of DNA tests is that it would eviscerate this statute. Once a DNA test is conducted, the statute no longer allows the court not to establish paternity. Of course, the reality is that, once a DNA test is conducted, the purpose of the statute is defeated.

I know that it is said that there is an administrative safeguard that will prevent the DNA test from being mandated. It is that, in an application for W-2, the mother can be relieved of her obligation to identify the father by showing "good cause" – which would include the fact that the father is abusive, for example. If she does not show good cause, of course, she will not receive the W-2 payments without cooperating in establishing paternity.

There are a few problems with this. The biggest is that few mothers are granted a good cause exception. A lot of mothers are not even told about the exception. The reason is that the agency has a self interest in not determining that the mother has good cause. The agency's job is to require participation in W-2. It is not to evaluate the wisdom of or justice in establishing paternity. There is a lot at stake for the child support agencies and the state in meeting federal requirements for the numbers of paternity adjudications they achieve for child support collection.

For other mothers who are not W-2 participants, there are not the same requirements of cooperation that involve the same considerations of good cause. Of course, these are cases where the mothers are seeking child support services, so these are not cases where mothers are unwilling to identify fathers. However, s. 767.855 does not limit itself to cases where the mothers think it is not good to establish paternity. Under the statute, Guardians ad litem may raise the issue before the court that it is not in the best interest of the child to establish paternity. They would raise the issue on behalf of the child.

This potential would be eliminated by the proposed administrative scheme, because DNA would be mandated, frustrating the purpose of s. 767.855.

II. An Administrative Process Requires Entry Level Bureaucrats or Private Contract Caseworkers to Make Decisions Now Reserved for Elected Officials and Law Trained Judges and Court Commissioners.

This underscores a second problem that is related to the creation of an administrative process. An administrative process does not have the safeguards that a judicial process has. Under this scheme, decisions are made by an entry level bureaucrat (or private caseworker in the case of private companies that are contracted with to provide W-2 benefits). These are not the elected officials and law trained judges and court commissioners who oversee paternity cases in court.

III. The \$300 Forfeiture Imposed on Alleged Fathers Who Do Not Answer to a Subpoena is Just Another Cost that Will Be Added to the Administrative Costs that Already Make it Difficult for Fathers to pay Child Support.

For men who do not respond to the subpoena, the \$300 forfeiture is simply added to the costs that the father will already have to pay for birth costs, which are huge, and for other administrative and court costs associated with the establishment of paternity. The more administrative costs that are added to the father's liability the more overwhelming the obligation becomes that faces him. Without a waiver of these costs, studies have shown that

men are less likely to make payments toward child support. And without a waiver of these costs, less money is paid for the actual child support that goes to the child.

IV. If the Goal is to Reduce Court Costs in Motions to Reopen, that Goal is Not Addressed Very Well by this Proposal, Since it Addresses Only a Very Limited Segment of the Population that May Be Involved in Motions to Reopen.

The proposal exempts acknowledgements and default cases from the cases where DNA test are mandated. The rationale for this whole administrative proposal of the department is said to be that counties are concerned about the number of cases that are reopened. The idea is that, by mandating DNA tests, the counties prevent reopening from occurring and thereby save on court costs. But, the department's proposal is only going to resolve that problem for stipulated cases and for contested cases. It will do nothing to stop the reopening of countless cases where judgments are entered based on an acknowledgement of paternity or where judgments are entered by default.

Judgments based on an acknowledgment of paternity or judgments by default can be easily reopened. An acknowledgment can be rescinded within 60 days after it is filed or before the day on which a court or court commissioner makes an order, whichever comes first. A default judgment or a judgment based on acknowledgment may be reopened for any reason within one year after judgment is entered. Judgments in either of these cases can be reopened for good cause at any time. A DNA test that shows that the man is not the father can be considered to be good cause, when you look at the extensive negative consequences for a parent or child in a faulty paternity adjudication.

It is estimated that 50% of the cases are by default, at least in Milwaukee County. That is a huge population that is capable of bringing motions to reopen. A significant number of cases are acknowledgment cases. As the study referred to above indicates, as much as 18% of these cases can be wrong. These are all subject to reopening as well. So, this proposal addresses only a small segment of the cases. All these other cases are fair game for reopening and for exposing the counties to increased court costs.

V. The Goal Sought By this Proposal Can Easily be Accomplished Under Current Law – and by Using Current Law, DNA Tests and the Establishment of Paternity Can be Avoided Where It is Not In the Best Interest of the Child to Establish Paternity.

Counties can already do what this proposal seeks. In all cases where DNA tests would be administratively mandated under this proposal (stipulated cases and contested cases), the counties can now simply ask for DNA tests to be ordered in court. The court will order the tests, unless it is not in the best interest of the child to establish paternity.

Now, as I indicated above, for reasons both of fairness and for the goal of avoiding motions to reopen, counties should also ask for DNA tests in all cases of acknowledgment as well.

The only cases (except for defaults) where the counties need not ask for DNA tests are those where there is a marital presumption. This is the same as the department's proposal. Under the department's proposal, the department would not mandate DNA tests where there is a marital presumption that applies. The theory behind this exception is that these are not families that child support wants to disrupt by mandating DNA tests.

Interestingly, the rationale for excluding marital presumption cases in the department's proposal is very much like the rationale underlying the purpose of s. 767.855, prohibiting the establishment of paternity, in the best interest of children. The department's proposal recognizes that there are circumstances where we don't want to establish paternity, even though we know that the person involved may well be the father. The same is true for cases where current s. 767.855 would not allow DNA tests to be ordered, in the best interest of the child.

Unfortunately, s. 767.855 would be effectively nullified by the proposed administrative scheme.

To: Connie Chesnik, Attorney
Department of Children and Families

From: Carol W. Medaris, Senior Attorney
Center for Family Policy and Practice

Date: July 30, 2010

Re: Proposed Paternity Legislation

Thank you for giving the Center for Family Policy and Practice the opportunity to respond to the Department's proposed paternity legislation. My comments on behalf of the Center follow.

- 1. The proposed administrative process for ordering genetic tests removes a critical protection for the family: it nullifies the statutory requirement that courts must dismiss the paternity adjudication if it is not in the best interest of the child.**

Section 767.855, Wis. Stats. provides that in any paternity action, on motion of a party or the guardian ad litem, a court may refuse to order genetic tests and dismiss the action if the court determines that finding a particular man to be the father is not in a child's best interest. The statute further provides that the court may only refuse to order tests and dismiss the action if genetic tests have not already been taken.

Under the Department's proposed bill, the subpoena would issue first thing. Only if the alleged father failed to appear and submit to the test would a formal paternity action commence in court. So, in all cases in which the alleged father complied with the subpoena, the right of a party to object to the action and to request a dismissal based upon the best interest of the child would be lost.

Generally the "best interest of the child" becomes an issue where identifying a particular man as the father threatens the health or welfare of the child or the mother. Cases where these threats exist to the extent that a man's biological paternity should not be determined will not be many – only where other court orders would be insufficient to protect the family if paternity were established. But in the most egregious cases, children must be protected. Section 767.855 exists to make sure that in pursuing the important purpose of establishing biological parentage, courts do no harm.

The statute envisions judges and court commissioners making the decision to dismiss the case, and not an administrative body. For cases coming into the system through applications for W-2 or Medical Assistance benefits, the allowance for parents to object to cooperating with child support agencies for "good cause" may eliminate a few county-

agency-initiated paternity actions. But the number of these cases have been few and far between and this process may not reasonably substitute for a court determination, as the legislature has determined in enacting sec.767.855. The county W-2 agency has financial incentives for establishing paternity. Furthermore, the county agency makes good cause determinations in consultation with the county child support agency which represents the state as a real party in interest in establishing paternity and obtaining child support. Such a forum fails to provide the hearing by a neutral decision-maker that is guaranteed by sec. 767.855.

In sum, a parent must be allowed an opportunity to go before the court and request that the paternity action be dismissed prior to ordering genetic tests, in order to adequately protect the child, and the state legislature has so provided by statute.

2. The \$300 forfeiture for failure to comply with the administrative subpoena is an unreasonable burden on low-income, alleged fathers, and for those found to be the father, it may well result in a reduced ability to pay ongoing child support.

Since these are all IV-D cases, alleged fathers are likely to be low-income. Those who are not found to be the father in the course of the paternity action, should be excused from this penalty, just as they are excused from the cost of genetic tests now.

For those low-income men who are determined to be the father and are unable to pay these costs along with their ongoing child support obligations, this \$300 penalty will simply be added to their arrears – a sum which in all likelihood includes substantial birth costs, as well.* And, the growth of arrears makes the payment of ongoing child support less likely. As a recent paper studying the relationship between debt and child support payments finds,

Our results suggest that higher arrears, in themselves, substantially reduce both child support payments and formal earnings for the fathers and families that already likely struggle in securing steady employment and coping with economic disadvantage, a serious unintended consequence of child support policy.

Cancian, Heinrich, and Chung, “Does Debt Discourage Employment and Payment of Child Support? Evidence from a Natural Experiment,” La Follette School of Public Affairs, Working Paper No. 2009-012.

For all these reasons, the \$300 penalty for failure to comply with the subpoena should be removed from the proposed bill.

* 70 percent of all child support arrears are estimated to be owed by fathers with no formal earnings or earnings below \$10,000 per year. Sorenson, Sousa, and Schaner, “Assessing Child Support Arrears in Nine Large States and the Nation,” Urban Institute Report to the U.S. Department of Health and Human Services (2007).

3. For those required to undergo genetic testing under these new procedures, costs should be waived to encourage fathers to have the tests taken.

Federal and state law clearly allow waiving costs for those required to undergo genetic testing, and in fact some states do this in order to encourage fathers to have the tests taken. According to a 1999 inspection by the Department of Health and Human Services Office of Inspector General, 15 states allowed local staff and courts discretion in seeking recoupment on a case-by-case basis and one state indicated that they do not try to collect reimbursement in any cases. "Paternity Establishment: State Use of Genetic Testing," OEI-06-98-00054. Eighteen state agencies reported that the fees charged for genetic tests are a barrier to putative fathers' use of testing.

The OIG report presents another consideration that supports waiving costs: an alleged father may be unsure whether he is the biological father or not, but may voluntarily acknowledge paternity to avoid the costs of genetic testing. His only other alternative is to wait for the issuance of a default order. In either case he waives his right to genetic testing because of the costs (and a child loses the opportunity of a definitive finding of biological parentage). Whether from the alleged father's point of view or that of the child's future well-being, it is not good public policy to encourage men to agree to paternity, regardless of doubt, in lieu of determining the truth of a child's parentage when that has become a relatively simple and inexpensive procedure for states to provide.

The Department anticipates that this new procedure will save counties money, since fewer adjudicated fathers will have second thoughts and request that their stipulated paternitys be reopened. It should also result in savings in court costs as more cases are resolved administratively rather than in court. It would be just and reasonable to pass these savings on to alleged fathers for whom payments are very likely to be burdensome, especially since a majority of the costs are reimbursed by the federal government.

Providing the "carrot" of subsidizing the genetic tests instead of the "stick" of the subpoena penalty is good public policy, for all of the above reasons.

4. Results of the genetic tests should be expunged for all alleged fathers found not to be the biological father in the paternity action.

What happens now with the results of genetic tests for those not found to be the father in paternity cases? The Center is concerned that these results might be saved to form a tempting list that could be accessed in future cases, regardless of whether a man is named in a subsequent paternity case or not. With the increased numbers of genetic tests anticipated, the Center sees a great potential for abuse of such a list of men whose only reason for inclusion is that a mother has named them as a possible father of a child in a single paternity case. One could imagine a routine of plugging in to the database anytime there was a child born without a presumed or voluntary father. Even scarier would be the potential availability of such a database for use in criminal investigations. The list will be primarily comprised of low-income men who already face innumerable barriers and biases in our communities.

It would be grossly unfair and a serious invasion of privacy for the results of their genetic tests to be maintained after the reason for administering the tests is over. The bill should specifically provide for the expungement of all test results for men who are not determined to be the father by the end of the paternity action.

Kahler, Pam

From: Kahler, Pam
Sent: Tuesday, October 12, 2010 11:31 AM
To: Chesnik, Connie - DCF
Subject: RE: Administrative paternity legislation

Thank you! I'll assume, then, for purposes of the draft that the draft will go into effect before the treaty is ratified. If that changes as time goes on, we can make the necessary changes in the draft.

From: Chesnik, Connie - DCF [<mailto:Connie.Chesnik@wisconsin.gov>]
Sent: Tuesday, October 12, 2010 11:28 AM
To: Kahler, Pam
Subject: RE: Administrative paternity legislation

Hi Pam,

No, Congress has not yet ratified that treaty. Amazingly enough, Wisconsin got way out ahead of this one. We knew that once the treaty was ratified, legislation would be introduced in Congress requiring all state to adopt the new UIFSA. We have already passed it, but it can't take effect until the Hague Convention is ratified and we have no idea when that will happen.

Connie

Connie M. Chesnik

Attorney

Department of Children and Families

ph: 608-267-7295

cell: 608-692-7379

fax: 608-261-6972

email: connie.chesnik@wisconsin.gov

From: Kahler, Pam [<mailto:Pam.Kahler@legis.wisconsin.gov>]
Sent: Friday, October 08, 2010 3:26 PM
To: Chesnik, Connie - DCF
Subject: RE: Administrative paternity legislation

Connie:

There are some provisions in the draft that are affected by Act 321, which has an effective date based on a notice by DCF in the Wis Admin Register (whether a treaty has been ratified). Would you happen to know if the treaty (The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance) has been ratified, DCF has notified the LRB, and the notice has been published? If not, I may have to wait for Bruce Hoesly to get back from vacation on Oct. 18.

Pam

From: Chesnik, Connie - DCF [<mailto:Connie.Chesnik@wisconsin.gov>]
Sent: Thursday, October 07, 2010 1:03 PM
To: Kahler, Pam
Subject: RE: Administrative paternity legislation

I leave for the meeting on Tuesday, the 26th. Thanks!

Connie M. Chesnik

Attorney
Department of Children and Families
ph: 608-267-7295
cell: 608-692-7379
fax: 608-261-6972
email: connie.chesnik@wisconsin.gov

From: Kahler, Pam [<mailto:Pam.Kahler@legis.wisconsin.gov>]
Sent: Thursday, October 07, 2010 1:00 PM
To: Chesnik, Connie - DCF
Subject: RE: Administrative paternity legislation

The changes you've mentioned don't sound too horrific to accomplish by the end of the month! I'll let you know if I have any questions or if problems arise. What date are you shooting for exactly?

From: Chesnik, Connie - DCF [<mailto:Connie.Chesnik@wisconsin.gov>]
Sent: Thursday, October 07, 2010 12:38 PM
To: Kahler, Pam
Subject: FW: Administrative paternity legislation

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These concerns were also raised by the Chief Judges and our proposed revisions should address them.

First, we would like to eliminate the \$300 forfeiture provision that had been proposed for failure to comply with an administrative subpoena. It was intended only to create an additional incentive to comply with an administrative subpoena but has been interpreted as being coercive and we would like, therefore, to remove it.

Second, we received a number of comments expressing concern about the inability of the court to dismiss a paternity action in the best interests of the child if that action is commenced after someone objects to the results of a genetic test done in response to an administrative subpoena pursuant to the new provisions. Under current law, the court has the authority under s.767.855 to dismiss a paternity action in the best interests of the child only until the point that tests are done. (As an aside, I will note that this is an issue under current law as many counties do genetic tests pursuant to administrative subpoenas now prior to commencing a paternity action.)

To address this issue, we are proposing an amendment to s.767.855 that would expand the court's authority to dismiss a paternity action if adjudication was not in the child's best interest regardless whether genetic tests have been taken. I believe that was the interpretation of that section prior to a recent Court of Appeals decision in *Randy A.J. v. Norma A.J.*

Feel free to call me to discuss. << File: Paternity -- Administrative Process.doc >> << File: Paternity bill response.doc >>

Thanks,

Connie

Connie M. Chesnik
Attorney

Department of Children and Families
ph: 608-267-7295
cell: 608-692-7379
fax: 608-261-6972
email: connie.chesnik@wisconsin.gov

Connie M. Chesnik
Attorney
Department of Children and Families
ph: 608-267-7295
cell: 608-692-7379
fax: 608-261-6972
email: connie.chesnik@wisconsin.gov

“RESEARCH APPENDIX”

... Drafting History Reproduction Request Form ...



DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: PJK) (Date: 10 / 7 / 10)

Note:

***BOTH DRAFTS SHOULD HAVE THE
SAME “REQUESTOR”***

(exception: companion bills)



Please transfer the drafting file for

2009 LRB 4430 (For: Rep. Sen. Seidel)

to the drafting file for

2011 LRB 0235 (For: Rep. / Sen. Seidel)

-----OR-----



Please copy the drafting file for

2011 LRB _____ / _____ (include the version) (For: Rep. / Sen. _____)

and place it in the drafting file for

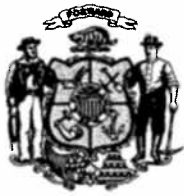
2011 LRB _____ (For: Rep. / Sen. _____)



Are These “Companion Bills” ?? ... Yes No

If yes, who in the initial requestor’s office authorized the copy/transfer of the drafting history

(“guts”) from the original file: _____



LPS-From 2009 LRB-4430/1
State of Wisconsin (not
2009-2010 LEGISLATURE "1/2")
2011-2012
0235/P1
note version was changed
LRB-4480/1
PJK:hand
keep

2009 BILL 2011

LPS-
P.W.F. (by 10-19, please)
4 (in 10-12)

regulate ↓

1 AN ACT *to renumber* 49.22 (2m) (b); *to renumber and amend* 49.141 (1) (i) and
2 767.84 (1) (a); *to amend* 48.02 (13), 48.27 (5), 48.396 (2) (dm), 48.42 (4) (b) 2.,
3 48.837 (4) (e), 48.91 (2), 49.22 (2m) (am), 49.22 (2m) (bc), 49.225 (2) (a), 49.855
4 (3), 49.855 (4m) (b), 69.15 (3) (a) (intro.), 69.15 (3) (a) 3., 565.30 (5m) (a), 767.407
5 (1) (c) (intro.), 767.41 (1) (b), 767.41 (1m) (intro.), 767.44 (1), 767.511 (1) (intro.),
6 767.511 (5), 767.513 (2), 767.55 (1), 767.55 (2) (am) (intro.), 767.55 (3) (a) 1.,
7 767.55 (3) (d), 767.55 (4) (b) (intro.), 767.59 (2s), 767.73 (1) (a), 767.75 (1) (b),
8 767.77 (1), 767.78 (1), 767.80 (1) (intro.), 767.80 (1) (c), 767.80 (5m), 767.82 (2),
9 767.82 (2m), 767.87 (8), 802.12 (3) (d) 1., 802.12 (3) (d) 3., 808.075 (4) (d) 9.,
10 808.075 (4) (d) 10., 852.05 (2), 938.02 (13) and 938.27 (5); and *to create* 49.141
11 (1) (i) 3., 49.141 (1) (j) 6., 49.22 (2m) (b) 2., 767.80 (1) (hm), 767.804, 767.84 (1)
12 (a) 1., 767.84 (1) (a) 2., 767.84 (1) (a) 3., 769.201 (7m) and 891.407 of the statutes;
13 **relating to:** presumption and conclusive determination of paternity on basis

BILL

①
② of genetic test results, and orders that may be granted on the basis of genetic test results, and providing a penalty

Analysis by the Legislative Reference Bureau

Under current law, a man may be adjudicated to be a child's father in a paternity action. In addition, a man and a child's mother may sign and file with the state registrar a form called a statement acknowledging paternity. Both cases result in a conclusive determination that the man is the child's father, and the state registrar may change the child's birth certificate to show the man as the child's father and a court may enter orders for child support, legal custody, and physical placement rights with respect to the man. Current law also contains presumptions of paternity. There is a presumption (marriage presumption) that a man is the father of a child if he and the child's mother were married when the child was conceived or born or if he and child's mother married after the child was born but had a relationship during the time within which the child was conceived and no other man has been adjudicated to be the father or is presumed to be the father because he was married to the child's mother when the child was conceived or born. There is also a presumption (statement acknowledging paternity presumption) that a man is a child's father if he and the child's mother signed and filed a statement acknowledging paternity with the state registrar and no other man is presumed to be the child's father under the marriage presumption.

This bill creates another way for a man to be conclusively determined to be a child's father, with the same effect as a paternity judgment. Under the bill, a man is conclusively determined to be a child's father if all of the following are satisfied: 1) genetic tests are performed with respect to the child, the child's mother, and the man and the test results show that the man is not excluded as the father and the statistical probability that he is the father is 99 percent or higher; 2) both the mother and the man are at least 18 years old; 3) there is no marriage or statement acknowledging paternity presumption; and 4) the genetic tests were performed in response to a subpoena issued by a county child support agency (child support agency) requiring the parties to submit to the tests. If all of those requirements are satisfied, the child support agency must send notice to the parties advising of the test results, that an action may be commenced for orders related to child support, legal custody, and physical placement, and that the man may submit to the child support agency a written objection to the test results. If the man submits an objection, the child support agency must commence a paternity action on behalf of the state and the test results are admissible in the action. If the man does not submit an objection by the time specified in the notice, the child support agency must file with the state registrar a report of the test results, showing a conclusive determination of paternity. On the basis of the report, the state registrar must insert the name of the father on the child's original birth certificate if the father's name was omitted.

Under the bill, if genetic test results conclusively determine a man to be a child's father, an action may be brought for child support, legal custody, and physical

BILL

placement. The court may also require the man to pay or contribute to the reasonable expenses of the mother's pregnancy and require either the man or mother to pay or contribute to the other party's attorney fees. In addition, the bill creates a presumption that a man is a child's father if all of the requirements under the bill are satisfied for conclusively determining a man to be a child's father on the basis of genetic test results and no other man is presumed to be the child's father under the marriage presumption.

The bill also makes other modifications related to genetic testing. Under current law, both a child support agency and the Department of Children and Families may issue subpoenas to require persons to submit to genetic tests under specified circumstances. The bill provides that a person who fails, without good cause, to comply with such a subpoena may be required to pay a forfeiture of not more than \$300. Also under current law, in a paternity action, the court may require, and upon request shall require, the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests. Under the bill, the court in a paternity action must require the child, the child's mother, and any male for whom there is probable cause to believe that he had sexual relations with the mother during the possible time of the child's conception to submit to genetic tests with the following exceptions:

1. Genetic tests are not required if the action will be dismissed or a default judgment will be entered because of the failure of a party to appear.

2. The court is not required to require any of the following persons to submit to genetic tests:

a. A person who was required by a child support agency to submit to a genetic test and who has done so.

b. The respondent in the action if he or she is deceased and genetic material is not available without undue hardship.

c. A male respondent who fails to appear if genetic test results with respect to another male show that the other male is not excluded as the father and that the statistical probability that he is the father is 99 percent or higher.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1

SECTION 1. 48.02 (13) of the statutes, as affected by 2009 Wisconsin Act 94, is

2

amended to read:

3

48.02 (13) "Parent" means a biological parent, a husband who has consented

4

to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If

or statement acknowledging
paternity

must

Insert A

and paternity
indications

BILL**SECTION 1**

1 the child is a nonmarital child who is not adopted or whose parents do not
2 subsequently intermarry under s. 767.803, "parent" includes a person conclusively
3 determined from genetic test results to be the father under s. 767.804✓ or a person
4 acknowledged under s. 767.805 or a substantially similar law of another state or
5 adjudicated to be the biological father. "Parent" does not include any person whose
6 parental rights have been terminated. For purposes of the application of s. 48.028
7 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a
8 biological parent, an Indian husband who has consented to the artificial
9 insemination of his wife under s. 891.40, or an Indian person who has lawfully
10 adopted an Indian child, including an adoption under tribal law or custom, and
11 includes, in the case of a nonmarital child who is not adopted or whose parents do
12 not subsequently intermarry under s. 767.803, a person conclusively determined
13 from genetic test results to be the father under s. 767.804✓, a person acknowledged
14 under s. 767.805, a substantially similar law of another state, or tribal law or custom
15 to be the biological father, or a person adjudicated to be the biological father, but does
16 not include any person whose parental rights have been terminated.

17 **SECTION 2.** 48.27 (5) of the statutes is amended to read:

18 48.27 (5) Subject to sub. (3) (b), the court shall make every reasonable effort
19 to identify and notify any person who has filed a declaration of paternal interest
20 under s. 48.025, any person conclusively determined from genetic test results to be
21 the father under s. 767.804 (1)✓, any person who has acknowledged paternity of the
22 child under s. 767.805 (1), and any person who has been adjudged to be the father
23 of the child in a judicial proceeding unless the person's parental rights have been
24 terminated.

25 **SECTION 3.** 48.396 (2) (dm) of the statutes is amended to read:

BILL

1 48.396 (2) (dm) Upon request of a court having jurisdiction over actions
2 affecting the family, an attorney responsible for support enforcement under s. 59.53
3 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party's
4 attorney or the guardian ad litem for the child who is the subject of that proceeding
5 to review or be provided with information from the records of the court assigned to
6 exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child
7 for the purpose of determining the paternity of the child or for the purpose of
8 rebutting the presumption of paternity under s. 891.405, [✓]891.407, or 891.41 (1), the
9 court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for
10 inspection by the requester its records relating to the paternity of the child or disclose
11 to the requester those records.

12 **SECTION 4.** 48.42 (4) (b) 2. [✓]of the statutes is amended to read:

13 48.42 (4) (b) 2. If the child is a nonmarital child who is not adopted or whose
14 parents do not subsequently intermarry under s. 767.803 and paternity has not been
15 conclusively determined from genetic test results under s. 767.804, [✓]acknowledged
16 under s. 767.805 or a substantially similar law of another state, or adjudicated, the
17 court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd.
18 4.

19 **SECTION 5.** 48.837 (4) (e) [✓]of the statutes is amended to read:

20 48.837 (4) (e) Shall, before hearing the petitions under subs. (2) and (3),
21 ascertain whether the paternity of a nonmarital child who is not adopted or whose
22 parents do not subsequently intermarry under s. 767.803 has been conclusively
23 determined from genetic test results under s. 767.804, [✓]acknowledged under s.
24 767.805 or a substantially similar law of another state, or adjudicated in this state
25 or another jurisdiction. If the child's paternity has not been [✓]conclusively determined

BILL**SECTION 5**

1 from genetic test results, acknowledged, or adjudicated, the court shall attempt to
2 ascertain the paternity of the child and shall determine the rights of any person who
3 may be the father of the child as provided under s. 48.423. The court may not proceed
4 with the hearing on the petitions under this section unless the parental rights of the
5 nonpetitioning parent, whether known or unknown, have been terminated.

6 **SECTION 6.** 48.91 (2) [✓] of the statutes is amended to read:

7 48.91 (2) In an adoption proceeding for a nonmarital child who is not adopted
8 or whose parents do not subsequently intermarry under s. 767.803, the court shall
9 establish whether the child's paternity has been conclusively determined from
10 genetic test results under s. 767.804 [✓], acknowledged under s. 767.805 or a
11 substantially similar law of another state, or adjudicated in this state or in another
12 jurisdiction. If the child's paternity has not been conclusively determined from
13 genetic test results [✓], acknowledged, or adjudicated, the court shall attempt to
14 ascertain the paternity of the child and shall determine the rights of any person who
15 may be the father of the child as provided under s. 48.423. The court may not proceed
16 with the hearing on the petition for adoption unless the parental rights of the
17 nonpetitioning parent, whether known or unknown, have been terminated.

18 **SECTION 7.** 49.141 (1) (i) [✓] of the statutes is renumbered 49.141(1) (i) (intro.) and
19 amended to read:

20 49.141 (1) (i) (intro.) [✓] "Nonmarital coparent" means, with respect to an
21 individual and a dependent child, a parent who is not married to the individual, who
22 resides with the dependent child, and who is either an [✓] one of the following:

23 1. An adjudicated parent [✓] ~~or a~~.

24 2. A [✓] parent who has signed and filed with the state registrar under s. 69.15 (3)

25 (b) 3. a statement acknowledging paternity.

BILL

SECTION 8. 49.141 (1) (i) 3. of the statutes is created to read:

49.141 (1) (i) 3. A parent who has been conclusively determined from genetic test results to be the father under s. 767.804.

SECTION 9. 49.141 (1) (j) 6. of the statutes is created to read:

49.141 (1) (j) 6. A man who has been conclusively determined from genetic test results to be the father under s. 767.804.

SECTION 10. 49.22 (2m) (am) of the statutes is amended to read:

49.22 (2m) (am) In conjunction with any request for information under par. (a), including a request made by subpoena under par. (b) 1., the department or county child support agency under s. 59.53 (5) shall advise the person of the time by which the information must be provided and of any consequences to the person under par. (d) that may result from a failure to respond or comply with the request.

SECTION 11. 49.22 (2m) (b) of the statutes is renumbered 49.22 (2m) (b) 1.

SECTION 12. 49.22 (2m) (b) 2. of the statutes is created to read:

49.22 (2m) (b) 2. Any person who fails, without good cause, as determined by the department or county child support agency, to comply with a subpoena issued by the department or a county child support agency under subd. 1. or s. 49.225 (2) requiring the person to submit to genetic testing may be required to forfeit not more than \$300.

SECTION 13. 49.22 (2m) (bc) of the statutes is amended to read:

49.22 (2m) (bc) A person in this state shall comply with an administrative subpoena that is issued from another state to compel the production of financial information or other documentary evidence for purposes comparable to those specified in par. (b) 1.

SECTION 14. 49.225 (2) (a) of the statutes is amended to read:

BILL

SECTION 14

1 49.225 (2) (a) A county child support agency under s. 59.53 (5) may require, by
2 subpoena in substantially the form authorized under s. 885.02 or by other means, a
3 child, the child's mother, and a male alleged, or alleging himself, to be the child's
4 father to submit to genetic tests if there is probable cause to believe that the male
5 had sexual intercourse with the child's mother during a possible time of the child's
6 conception. Probable cause of sexual intercourse during a possible time of conception
7 may be established by a sufficient affidavit of the child's mother ~~or~~, the male alleged,
8 or alleging himself, to be the child's father, or the county child support agency under
9 s. 59.53 (5) based on information provided by the child's mother.

10 SECTION 15. ~~49.855~~ (3) of the statutes is amended to read:

11 49.855 (3) Receipt of a certification by the department of revenue shall
12 constitute a lien, equal to the amount certified, on any state tax refunds or credits
13 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
14 setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines
15 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
16 obligor that the state intends to reduce any state tax refund or credit due the obligor
17 by the amount the obligor is delinquent under the support, maintenance, or receiving
18 and disbursing fee order or obligation, by the outstanding amount for past support,
19 medical expenses, or birth expenses under the court order, or by the amount due
20 under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20
21 days the obligor may request a hearing before the circuit court rendering the order
22 under which the obligation arose. Within 10 days after receiving a request for
23 hearing under this subsection, the court shall set the matter for hearing. Pending
24 further order by the court or a circuit court commissioner, the department of children
25 and families or its designee, whichever is appropriate, is prohibited from disbursing

BILL

1 the obligor's state tax refund or credit. A circuit court commissioner may conduct the
2 hearing. The sole issues at that hearing shall be whether the obligor owes the
3 amount certified and, if not and it is a support or maintenance order, whether the
4 money withheld from a tax refund or credit shall be paid to the obligor or held for
5 future support or maintenance, except that the obligor's ability to pay shall also be
6 an issue at the hearing if the obligation relates to an order under s. 767.804 (3) (d)
7 1., 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that the court found
8 that the obligor's income was at or below the poverty line established under 42 USC
9 9902 (2).

10 **SECTION 16.** 49.855 (4m) (b) of the statutes, as affected by 2009 Wisconsin Act
11 113, is amended to read:

12 49.855 (4m) (b) The department of revenue may provide a certification that it
13 receives under sub. (1), (2m), (2p), or (2r) to the department of administration. Upon
14 receipt of the certification, the department of administration shall determine
15 whether the obligor is a vendor or is receiving any other payments from this state,
16 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
17 45.40 (1m), this chapter, or ch. 46, 108, or 301. If the department of administration
18 determines that the obligor is a vendor or is receiving payments from this state,
19 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
20 45.40 (1m), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount
21 certified from those payments and shall notify the obligor that the state intends to
22 reduce any payments due the obligor by the amount the obligor is delinquent under
23 the support, maintenance, or receiving and disbursing fee order or obligation, by the
24 outstanding amount for past support, medical expenses, or birth expenses under the
25 court order, or by the amount due under s. 46.10 (4), 49.345 (4), or 301.12 (4). The

BILL

SECTION 16

notice shall provide that within 20 days after receipt of the notice the obligor may request a hearing before the circuit court rendering the order under which the obligation arose. An obligor may, within 20 days after receiving notice, request a hearing under this paragraph. Within 10 days after receiving a request for hearing under this paragraph, the court shall set the matter for hearing. A circuit court commissioner may conduct the hearing. Pending further order by the court or circuit court commissioner, the department of children and families or its designee, whichever is appropriate, may not disburse the payments withheld from the obligor. The sole issues at the hearing are whether the obligor owes the amount certified and, if not and it is a support or maintenance order, whether the money withheld shall be paid to the obligor or held for future support or maintenance, except that the obligor's ability to pay is also an issue at the hearing if the obligation relates to an order under s. 767.804 (3) (d) 1., 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that the court found that the obligor's income was at or below the poverty line established under 42 USC 9902 (2).

SECTION 17. 69.15 (3) (a) (intro.) of the statutes is amended to read:

69.15 (3) (a) (intro.) If the state registrar receives an order under sub. (1) which that establishes paternity or determines that the man whose name appears on a registrant's birth certificate is not the father of the registrant, or a report under s. 767.804 (1) (c) that shows a conclusive determination of paternity, the state registrar shall do the following, as appropriate:

SECTION 18. 69.15 (3) (a) 3. of the statutes is amended to read:

69.15 (3) (a) 3. Except as provided under subd. 4., insert the name of the adjudicated or conclusively determined father on the original birth certificate if the name of the father was omitted on the original certificate.

BILL

X

1 **SECTION 19.** 565.30 (5m) (a) of the statutes is amended to read:

2 565.30 **(5m)** (a) The administrator shall report to the department of children
3 and families the name, address, and social security number of each winner of a
4 lottery prize that is payable in installments and the name, address, and social
5 security number or federal income tax number of the person who has been assigned
6 a lottery prize that is payable in installments. Upon receipt of the report, the
7 department of children and families shall certify to the administrator whether any
8 payee or assignee named in the report is obligated to provide child support, spousal
9 support, maintenance, or family support under s. 767.001 (1) (f) or (g), 767.225,
10 767.34, 767.511, 767.531, 767.56, 767.804 (3), 767.805 (4), 767.85, 767.863 (3), 767.89
11 (3), 767.893 (2m), or 948.22 (7) or ch. 769 and the amount required to be withheld
12 from the lottery prize under s. 767.75. Subject to par. (b), the administrator shall
13 withhold the certified amount from each payment made to the winner or assignee
14 and remit the certified amount to the department of children and families.

X

15 **SECTION 20.** 767.407 (1) (c) (intro.) of the statutes is amended to read:

16 767.407 **(1)** (c) (intro.) The attorney responsible for support enforcement under
17 s. 59.53 (6) (a) may request that the court appoint a guardian ad litem to bring an
18 action or motion on behalf of a minor who is a nonmarital child whose paternity has
19 not been conclusively determined from genetic test results under s. 767.804,
20 acknowledged under s. 767.805 (1) or a substantially similar law of another state, or
21 adjudicated for the purpose of determining the paternity of the child, and the court
22 shall appoint a guardian ad litem, if any of the following applies:

X

23 **SECTION 21.** 767.41 (1) (b) of the statutes is amended to read:

24 767.41 **(1)** (b) In rendering a judgment of annulment, divorce, legal separation,
25 or paternity, or in rendering a judgment in an action under s. 767.001 (1) (e), 767.501,

BILL**SECTION 21**

✓
1 767.804 (2), or 767.805 (3), the court shall make such provisions as it deems just and
2 reasonable concerning the legal custody and physical placement of any minor child
3 of the parties, as provided in this section.

4 **SECTION 22.** 767.41 (1m) (intro.) ✓ of the statutes is amended to read:

5 767.41 (1m) PARENTING PLAN. (intro.) Unless the court orders otherwise, in an
6 action for annulment, divorce, or legal separation, an action to determine paternity,
7 or an action under s. 767.001 (1) (e), 767.501, 767.804 (2) ✓, or 767.805 (3), in which
8 legal custody or physical placement is contested, a party seeking sole or joint legal
9 custody or periods of physical placement shall file a parenting plan with the court if
10 the court waives the requirement to attend mediation under s. 767.405 (8) (b) or if
11 the parties attend mediation and the mediator notifies the court under s. 767.405
12 (12) (b) that the parties have not reached an agreement. Unless the court orders
13 otherwise, the parenting plan shall be filed within 60 days after the court waives the
14 mediation requirement or the mediator notifies the court that no agreement has been
15 reached. Except for cause shown, a party required to file a parenting plan under this
16 subsection who does not timely file a parenting plan waives the right to object to the
17 other party's parenting plan. A parenting plan shall provide information about the
18 following questions:

19 **SECTION 23.** 767.44 (1) ✓ of the statutes is amended to read:

20 767.44 (1) WHEN PROHIBITED. Notwithstanding ss. 767.225 (1) (am), 767.41 (1),
21 (4), and (5), ✓ 767.804 (3) (a), 767.805 (4) (a), and 767.89 (3) and except as provided in
22 sub. (2), in an action under this chapter that affects a minor child, a court may not
23 grant to the child's parent visitation or physical placement rights with the child if the
24 parent has been convicted under s. 940.01 of the first-degree intentional homicide,

BILL

1 or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent,
2 and the conviction has not been reversed, set aside, or vacated.

3 **SECTION 24.** 767.511 (1) (intro.)^X of the statutes is amended to read:

4 767.511 (1) WHEN ORDERED. (intro.) When the court approves a stipulation for
5 child support under s. 767.34, enters a judgment of annulment, divorce, or legal
6 separation, or enters an order or a judgment in a paternity action or in an action
7 under s. 767.001 (1) (f) or (j), 767.501, 767.804[✓](2), or 767.805 (3), the court shall do
8 all of the following:

9 **SECTION 25.** 767.511 (5)^X of the statutes is amended to read:

10 767.511 (5) LIABILITY FOR PAST SUPPORT. Subject to ss. 767.804[✓](4), 767.805 (4m),
11 and 767.89 (4), liability for past support is limited to the period after the birth of the
12 child.

13 **SECTION 26.** 767.513 (2)^X of the statutes is amended to read:

14 767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support
15 for a child under s. 767.511 (1), the court shall specifically assign responsibility for
16 and direct the manner of payment of the child's health care expenses. In assigning
17 responsibility for a child's health care expenses, the court shall consider whether a
18 child is covered under a parent's health insurance policy or plan at the time the court
19 approves a stipulation for child support under s. 767.34, enters a judgment of
20 annulment, divorce, or legal separation, or enters an order or a judgment in a
21 paternity action or in an action under s. 767.001 (1) (f) or (j), 767.501,[✓]767.804(2), or
22 767.805 (3), the availability of health insurance to each parent through an employer
23 or other organization, the extent of coverage available to a child, and the costs to the
24 parent for the coverage of the child. A parent may be required to initiate or continue
25 health care insurance coverage for a child under this section. If a parent is required

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1 to do so, he or she shall provide copies of necessary program or policy identification
2 to the custodial parent and is liable for any health care costs for which he or she
3 receives direct payment from an insurer. This section shall not be construed to limit
4 the authority of the court to enter or modify support orders containing provisions for
5 payment of medical expenses, medical costs, or insurance premiums that are in
6 addition to and not inconsistent with this section.

7 **SECTION 27.** 767.55 (1) ^X of the statutes is amended to read:

8 767.55 (1) GENERALLY. In an action for modification of a child support order
9 under s. 767.59 or an action in which an order for child support is required under s.
10 767.511 (1), 767.804 (3) [✓], 767.805 (4), or 767.89 (3), the court may order either or both
11 parents of the child to seek employment or participate in an employment or training
12 program.

13 **SECTION 28.** 767.55 (2) (am) ^X (intro.) of the statutes is amended to read:

14 767.55 (2) (am) (intro.) In an action for modification of a child support order
15 under s. 767.59, an action in which an order for child support is required under s.
16 767.511 (1), 767.804 (3) [✓], 767.805 (4), or 767.89 (3), or a contempt of court proceeding
17 to enforce a child support or family support order in a county that contracts under
18 s. 49.36 (2), the court may order a parent who is not a custodial parent to register for
19 a work experience and job training program under s. 49.36 if all of the following
20 conditions are met:

21 **SECTION 29.** 767.55 (3) (a) ^X 1. of the statutes is amended to read:

22 767.55 (3) (a) 1. Is an action for modification of a child support order under s.
23 767.59 or an action in which an order for child support is required under s. 767.511
24 (1), 767.804 (3) [✓], 767.805 (4), or 767.89 (3).

25 **SECTION 30.** 767.55 (3) (d) ^X of the statutes is amended to read:

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1 767.55 (3) (d) Paragraph (b) does not limit the authority of a court to issue an
2 order, other than an order under par. (b), regarding employment of a parent in an
3 action for modification of a child support order under s. 767.59 or an action in which
4 an order for child support is required under s. 767.511 (1), 767.804 (3), 767.805 (4),
5 or 767.89 (3).

6 **SECTION 31.** 767.55 (4) (b) (intro.) of the statutes is amended to read:

7 767.55 (4) (b) (intro.) In an action for revision of a judgment or order providing
8 for child support under s. 767.59 or an action in which an order for child support is
9 required under s. 767.511 (1), 767.804 (3), 767.805 (4), or 767.89 (3), the court shall
10 order an unemployed teenage parent to do one or more of the following:

11 **SECTION 32.** 767.59 (2s) of the statutes is amended to read:

12 767.59 (2s) STIPULATION FOR REVISION OF SUPPORT. In an action under sub. (1c),
13 the court may not approve a stipulation for the revision of a judgment or order with
14 respect to an amount of child support or family support unless the stipulation
15 provides for payment of an amount of child support or family support that is
16 determined in the manner required under s. 46.10 (14), 49.345 (14), 301.12 (14),
17 767.511, 767.804 (3), 767.805 (4), or 767.89, whichever is appropriate.

18 **SECTION 33.** 767.73 (1) (a) of the statutes is amended to read:

19 767.73 (1) (a) In this subsection, "support payment" means a payment ordered
20 for support under s. 767.521, support under s. 767.501, child support or family
21 support under s. 767.225, child support under s. 767.511, family support under s.
22 767.531, revised child or family support under s. 767.59, child support under s.
23 767.863 (3), child support under s. 767.85, child support under s. 767.89, child
24 support under s. 767.804 (3), child support under s. 767.805 (4), child support under
25 ch. 769, or child support under s. 948.22 (7).

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1 **SECTION 34.** 767.75 (1) (b) of the statutes is amended to read:

2 767.75 (1) (b) "Payment order" means an order for child support under this
3 chapter, for maintenance payments under s. 767.225 or 767.56, for family support
4 under this chapter, for costs ordered under s. 767.804 (3), 767.805 (4), or 767.89 (3),
5 for support by a spouse under s. 767.001 (1) (f), or for maintenance payments under
6 s. 767.001 (1) (g); an order for or obligation to pay the annual receiving and
7 disbursing fee under s. 767.57 (1e) (a); an order for a revision in a judgment or order
8 with respect to child support, maintenance, or family support payments under s.
9 767.59; a stipulation approved by the court for child support under this chapter; and
10 an order for child or spousal support entered under s. 948.22 (7).

11 **SECTION 35.** 767.77 (1) of the statutes is amended to read:

12 767.77 (1) DEFINITION. In this section, "payment obligation" means an
13 obligation to pay support under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183
14 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), support or maintenance under
15 s. 767.501, child support, family support, or maintenance under s. 767.225, child
16 support under s. 767.511, maintenance under s. 767.56, family support under s.
17 767.531, attorney fees under s. 767.241, child support or a child's health care
18 expenses under s. 767.85, paternity obligations under s. 767.804 (3), 767.805 (4),
19 767.863 (3), or 767.89, support arrearages under s. 767.71, or child or spousal support
20 under s. 948.22 (7).

21 **SECTION 36.** 767.78 (1) of the statutes is amended to read:

22 767.78 (1) DEFINITION. In this section, "financial obligation" means an
23 obligation for payment incurred under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2),
24 767.225, 767.241, 767.511, 767.531, 767.56, 767.61, 767.71, 767.804 (3), 767.805 (4),

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1 767.85, 767.863 (3), 767.89, 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or
2 938.363 (2).

3 **SECTION 37.** 767.80 (1) (intro.)[✓] of the statutes is amended to read:

4 767.80 (1) WHO MAY BRING ACTION OR FILE MOTION. (intro.) The following persons
5 may bring an action or file a motion, including an action or motion for declaratory
6 judgment, for the purpose of determining the paternity of a child, or for the purpose
7 of rebutting the presumption of paternity under s. 891.405,[✓] 891.407, or 891.41 (1):

8 **SECTION 38.** 767.80 (1) (c) of the statutes is amended to read:

9 767.80 (1) (c) Unless s. 767.804 (1)[✓] or 767.805 (1) applies, a male presumed to
10 be the child's father under s. 891.405,[✓] 891.407, or 891.41 (1).

11 **SECTION 39.** 767.80 (1) (hm)[✓] of the statutes is created to read:

12 767.80 (1) (hm) The state as provided under s. [✓]767.804 (1) (d).

13 **SECTION 40.** 767.80 (5m)[✓] of the statutes is amended to read:

14 767.80 (5m) APPLICABLE PROCEDURE; EXCEPTIONS. Except as provided in ss.
15 767.804[✓], 767.805, 767.863 (3), 767.85, 767.893 (2) and (2m), and 769.401, unless a
16 male is presumed the child's father under s. 891.41 (1), is adjudicated the child's
17 father either under s. 767.89 or by final order or judgment of a court of competent
18 jurisdiction in another state, is conclusively determined to be the child's father from
19 genetic test results under s. 767.804[✓], or has acknowledged himself to be the child's
20 father under s. 767.805 (1) or a substantially similar law of another state, no order
21 or temporary order may be entered for child support, legal custody, or physical
22 placement until the male is adjudicated the father using the procedure set forth in
23 this subchapter, except s. 767.804[✓] or 767.805. Except as provided in ss. [✓]767.804,
24 767.805, 767.85, and 769.401, the exclusive procedure for establishment of child
25 support obligations, legal custody, or physical placement rights for a male who is not

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1 presumed the child's father under s. 891.41 (1), adjudicated the father, conclusively
2 determined to be the child's father from genetic test results under s. 767.804, or
3 acknowledged under s. 767.805 (1) or a substantially similar law of another state to
4 be the father is by an action under this subchapter, except s. 767.804 or 767.805, or
5 under s. 769.701. No person may waive the use of this procedure. If a presumption
6 under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the
7 presumption.

8 **SECTION 41.** 767.804 of the statutes is created to read:

9 **767.804 Genetic test results. (1)** CONCLUSIVE DETERMINATION OF PATERNITY.

10 (a) If genetic tests have been performed with respect to a child, the child's mother,
11 and a male alleged, or alleging himself, to be the child's father, the test results
12 constitute a conclusive determination of paternity, which shall be of the same effect
13 as a judgment of paternity, if all of the following apply:

- 14 1. Both the child's mother and the male are over the age of 18 years.
- 15 2. The genetic tests were performed under s. 49.225.
- 16 3. The test results show that the male is not excluded as the father and that
17 the statistical probability of the male's parentage is 99.0 percent or higher.
- 18 4. No other male is presumed to be the father under s. 891.405 or 891.41 (1).

19 (b) If the county child support agency under s. 59.53 (5) receives genetic test
20 results described in par. (a) 3. and the requirements under par. (a) are satisfied, at
21 least 10 days before filing the report under par. (c) the county child support agency
22 shall send notice to the parties by regular mail at their last-known addresses. The
23 notice shall advise the parties of all of the following:

- 24 1. The test results.

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1 2. That the report under par. (c)✓ will be filed with the state registrar on a
2 specified date.

3 3. That an action affecting the family concerning custody, child support, or
4 physical placement rights may be brought with respect to the parties.✓

5 4. That the father✓ may object to the test results by submitting an objection in
6 writing to the county child support agency no later than the day before the report
7 under par. (c)✓ is to be filed, and that, if the father submits an objection, the state will
8 commence a paternity action.✓

9 (c) 1. If the male does not timely submit an objection under par. (b) 4., the county
10 child support agency shall file with the state registrar a report showing the names,
11 dates, and birth places of the child and the father,✓ the social security numbers of the
12 mother, father, and child,✓ and the maiden name of the mother on a form prescribed
13 by the state registrar, along with the fee set forth in s. 69.22 (5),✓ if any, which the
14 county child support agency shall collect.

15 2. The department✓ shall pay, and may not require the county or county child
16 support agency to reimburse the department for the cost of a fee for inserting the
17 father's name on a birth certificate under s. 69.15 (3) (a) 3. if the county child support
18 agency is unable to collect the fee.

19 (d) If the male timely submits an objection under par. (b) 4., the county child
20 support agency shall commence an action under s. 767.80 (1)✓ on behalf of the state.
21 The genetic test results described in par. (a)✓ are admissible in an action commenced
22 under this paragraph.✓

23 (2) ACTIONS.✓ Unless sub. (1) (d)✓ applies, an action affecting the family
24 concerning custody, child support, or physical placement rights may be brought
25 under this subsection✓ with respect to a child's mother and a male who, along with the

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1 child, were the subjects of genetic tests, the results of which constitute a conclusive
2 determination of paternity under sub. (1).[✓] Except as provided in s. 767.407, in an
3 action under this subsection the court may appoint a guardian ad litem for the child.

4 (3) ORDERS.[✓] In an action under sub. (2),[✓] if the child's mother and the male had
5 notice of the hearing, the court shall make an order that contains all of the following
6 provisions:

7 (a) Orders for the legal custody of and periods of physical placement with the
8 child, determined in accordance with s. 767.41.[✓]

9 (b) An order requiring either or both of the parents to contribute to the support
10 of any child of the parties who is less than 18[✓] years old, or any child of the parties who
11 is less than[✓] 19 years old if the child is pursuing an accredited course of instruction
12 leading to the acquisition of a high school diploma or its equivalent, determined in
13 accordance with s.[✓] 767.511.

14 (c) A determination as to which parent,[✓] if eligible, shall have the right to claim
15 the child as an exemption for federal tax purposes under 26 USC 151 (c) (1) (B), or
16 as an exemption for state tax purposes under s. 71.07[✓](8) (b).

17 (d) 1. An order establishing the amount of the father's obligation to pay or
18 contribute to the reasonable expenses of the mother's pregnancy and the child's
19 birth. The amount established may not exceed one-half[✓] of the total actual and
20 reasonable pregnancy and birth expenses. The order also shall specify the court's
21 findings as to whether the father's income is at or below the poverty line established
22 under 42 USC 9902 (2), and shall specify whether periodic payments are due on the
23 obligation, based on the father's ability to pay or contribute to those expenses.[✓]

24 2. If the order does not require periodic payments because the father has no
25 present ability to pay or contribute to the expenses, the court may modify the

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1 judgment or order at a later date to require periodic payments if the father has the
2 ability to pay at that time.✓

3 (e) An order requiring either or both parties to pay or contribute to the costs
4 of guardian ad litem fees, if any, and other costs.✓

5 (f) An order requiring either party to pay or contribute to the attorney fees of
6 the other party.✓

7 (4) LIABILITY FOR PAST SUPPORT.✓(a) Subject to par. (b),✓ liability for past support
8 of the child shall be limited to support for the period after the day on which the
9 petition, motion, or order to show cause requesting support is filed in the action for
10 support under sub. (2), unless a party shows, to the satisfaction of the court, all of the
11 following:

12 1. That he or she was induced to delay commencing the action by any of the
13 following.✓

14 a. Duress or threats.

15 b. Actions, promises, or representations by the other party upon which the
16 party relied.✓

17 c. Actions taken by the other party to evade proceedings under sub. (2).✓

18 2. That, after the inducement ceased to operate, he or she did not unreasonably
19 delay in commencing the action.✓

20 (b) In no event may liability for past support of the child be imposed for any
21 period before the birth of the child.✓

22 **SECTION 42.** 767.82 (2) of the statutes is amended to read:

23 767.82 (2) PRESUMPTION. Presumption of paternity shall be as provided in ss.
24 891.39, 891.405, 891.407, and 891.41 (1).✓

25 **SECTION 43.** 767.82 (2m) of the statutes is amended to read:✓

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SECTION 43

1 767.82 (2m) CUSTODY PENDING COURT ORDER. If there is no presumption of
2 paternity under s. 891.41 (1) or if paternity is conclusively determined from genetic
3 test results under s. 767.804 (1) or acknowledged under s. 767.805 (1), the mother
4 shall have sole legal custody of the child until the court orders otherwise.

5 **SECTION 44.** 767.84 (1) (a) of the statutes is renumbered 767.84 (1) (a) (intro.)
6 and amended to read:

7 767.84 (1) (a) (intro.) The Except in actions to which s. 767.893 applies, the
8 court ~~may, and upon request of a party~~ shall, require the child, mother, any male for
9 whom there is probable cause to believe that he had sexual intercourse with the
10 mother during a possible time of the child's conception, or any male witness who
11 testifies or will testify about his sexual relations with the mother at a possible time
12 of conception to submit to genetic tests. Probable cause of sexual intercourse during
13 a possible time of conception may be established by a sufficient petition or affidavit
14 of the child's mother or an alleged father, filed with the court, or after an examination
15 under oath of a party or witness, when the court determines that an examination is
16 necessary. The court is not required to order a ~~person who has undergone a genetic~~
17 ~~test under s. 49.225 to submit to another genetic~~ test under this paragraph unless
18 ~~a party requests additional tests under sub. (2).~~ with respect to any of the following:

19 **SECTION 45.** 767.84 (1) (a) 1. of the statutes is created to read:

20 767.84 (1) (a) 1. A person who has undergone a genetic test under s. 49.225,
21 unless a party requests additional tests under sub. (2).

22 **SECTION 46.** 767.84 (1) (a) 2. of the statutes is created to read:

23 767.84 (1) (a) 2. A deceased respondent if genetic material is not available
24 without undue hardship as provided in s. 767.865 (2).

25 **SECTION 47.** 767.84 (1) (a) 3. of the statutes is created to read:

as provided in ss. 767.855 and 767.863, and except

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1 767.84 (1) (a) 3. a. Except as provided in subd. 3. b., a male respondent who fails
2 to appear, if genetic test results with respect to another man show that the other man
3 is not excluded as the father and that the statistical probability of the other man's
4 parentage is 99.0 percent or higher creating a presumption of the other man's
5 paternity.

6 b. Subdivision 3. a. does not apply if the presumption of the other man's
7 paternity is rebutted.

8 **SECTION 48.** 767.87 (8) of the statutes is amended to read:

9 767.87 (8) BURDEN OF PROOF. The party bringing an action for the purpose of
10 determining paternity or for the purpose of declaring the nonexistence of paternity
11 presumed under s. 891.405, 891.407, or 891.41 (1) shall have the burden of proving
12 the issues involved by clear and satisfactory preponderance of the evidence.

13 **SECTION 49.** 769.201 (7m) of the statutes is created to read:

14 769.201 (7m) The individual was conclusively determined from genetic test
15 results to be the father under s. 767.804.

16 **SECTION 50.** 802.12 (3) (d) 1. of the statutes is amended to read:

17 802.12 (3) (d) 1. Custody and physical placement under s. 767.41, 767.804 (3),
18 767.805 (4), 767.863 (3), or 767.89 (3).

19 **SECTION 51.** 802.12 (3) (d) 3. of the statutes is amended to read:

20 802.12 (3) (d) 3. Child support under s. 767.511, 767.804 (3), 767.805 (4),
21 767.863 (3), or 767.89 (3).

22 **SECTION 52.** 808.075 (4) (d) 9. of the statutes is amended to read:

23 808.075 (4) (d) 9. Enforcement of payments under s. 767.77, 767.804 (3),
24 767.805 (4), or 767.89.

25 **SECTION 53.** 808.075 (4) (d) 10. of the statutes is amended to read:

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BILL**SECTION 53**

1 808.075 (4) (d) 10. Enforcement of orders under s. s. 767.78, [✓]767.804 (3),
2 767.805 (4), or 767.89.

3 **SECTION 54.** 852.05 (2) [✓]of the statutes is amended to read:

4 852.05 (2) Property of a child born to unmarried parents passes in accordance
5 with s. 852.01 except that the father or the father's kindred can inherit only if the
6 father has been adjudicated to be the father in a paternity proceeding under ch. 767
7 or by final order or judgment of a court of competent jurisdiction in another state or
8 has been determined to be the father under s. [✓]767.804 or 767.805 or a substantially
9 similar law of another state.

10 **SECTION 55.** 891.407 [✓]of the statutes is created to read:

11 **891.407 Presumption of paternity based on genetic test results.** [✓]A man
12 is presumed to be the natural father of a child if the man has been conclusively
13 determined from genetic test results to be the father under s. [✓]767.804 and no other
14 man is presumed to be the father under s. [✓]891.405 or 891.41 (1). [✓]

15 **SECTION 56.** 938.02 (13) [✓]of the statutes, as affected by 2009 Wisconsin Act 94,
16 is amended to read:

17 938.02 (13) "Parent" means a biological parent, a husband who has consented
18 to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If
19 the juvenile is a nonmarital child who is not adopted or whose parents do not
20 subsequently intermarry under s. 767.803, "parent" includes a person conclusively
21 determined from genetic test results to be the father under s. [✓]767.804 or a person
22 acknowledged under s. 767.805 or a substantially similar law of another state or
23 adjudicated to be the biological father. "Parent" does not include any person whose
24 parental rights have been terminated. For purposes of the application of s. 938.028
25 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a

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1 biological parent, an Indian husband who has consented to the artificial
2 insemination of his wife under s. 891.40, or an Indian person who has lawfully
3 adopted an Indian juvenile, including an adoption under tribal law or custom, and
4 includes, in the case of a nonmarital child who is not adopted or whose parents do
5 not subsequently intermarry under s. 767.803, a person conclusively determined
6 from genetic test results to be the father under s. 767.804, a person acknowledged
7 under s. 767.805, a substantially similar law of another state, or tribal law or custom
8 to be the biological father, or a person adjudicated to be the biological father, but does
9 not include any person whose parental rights have been terminated.

10 **SECTION 57.** 938.27 (5) of the statutes is amended to read:

11 938.27 (5) NOTICE TO BIOLOGICAL FATHERS. Subject to sub. (3) (b), the court shall
12 make reasonable efforts to identify and notify any person who has filed a declaration
13 of paternal interest under s. 48.025, any person conclusively determined from
14 genetic test results to be the father under s. 767.804 (1), any person who has
15 acknowledged paternity of the child under s. 767.805 (1), and any person who has
16 been adjudged to be the father of the juvenile in a judicial proceeding unless the
17 person's parental rights have been terminated.

18 **SECTION 58. Initial applicability.**

19 (1) SUBPOENAS. The treatment of section 49.22 (2m) (am) and (bc) of the
20 statutes, the renumbering of section 49.22 (2m) (b) of the statutes, and the creation
21 of section 49.22 (2m) (b) 2. of the statutes first apply to subpoenas issued on the
22 effective date of this subsection.

23 **PATERNITY DETERMINATION OR PRESUMPTION BASED ON GENETIC TEST RESULTS.**

24 The treatment of section 767.804 of the statutes first applies to genetic tests that are
25 taken on the effective date of this subsection.

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1 (8) GENETIC TESTS IN PATERNITY ACTIONS. The renumbering and amendment of
2 section 767.84 (1) (a) of the statutes and the creation of section 767.84 (1) (a) 1., 2.,
3 and 3. of the statutes first apply to paternity actions commenced on the effective date
4 of this subsection. and 767.855 (1) and (2)

SECTION 59. Effective date.

6 (1) This act takes effect on the first day of the 6th month beginning after
7 publication.

(END)

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④ Current law includes an exception to the requirement to order genetic tests in a paternity action. If the court determines, upon the motion of a party or guardian ad litem at any time in the action, that a judicial determination of whether a male is the father of the child is not in the best interest of the child, the court may, with respect to the male, refuse to order genetic tests, if they haven't already been taken, and dismiss the action. The Wisconsin Supreme Court, in *Randy A.J. v. Norma I.J.*, 2004 WI 41, 270 Wis. 2d 384, 677 N.W. 2d 630, determined that the statute does not apply if genetic tests had already been taken. The bill removes the requirement that genetic tests may not have been performed and provides that, if the court determines that a judicial determination of whether a male is the father of the child is not in the best interest of the child, the court may not only refuse to order genetic tests but may also dismiss the action, regardless of whether genetic tests have been performed or what the results were of any genetic tests that have been performed.

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1 49.855 (3) Receipt of a certification by the department of revenue shall
2 constitute a lien, equal to the amount certified, on any state tax refunds or credits
3 owed to the obligor. The lien shall be foreclosed by the department of revenue as a
4 setoff under s. 71.93 (3), (6), and (7). When the department of revenue determines
5 that the obligor is otherwise entitled to a state tax refund or credit, it shall notify the
6 obligor that the state intends to reduce any state tax refund or credit due the obligor
7 by the amount the obligor is delinquent under the support, maintenance, or receiving
8 and disbursing fee order or obligation, by the outstanding amount for past support,
9 medical expenses, or birth expenses under the court order, or by the amount due
10 under s. 46.10 (4), 49.345 (4), or 301.12 (4). The notice shall provide that within 20
11 days the obligor may request a hearing before the circuit court rendering the order
12 under which the obligation arose. Within 10 days after receiving a request for
13 hearing under this subsection, the court shall set the matter for hearing. Pending
14 further order by the court or a circuit court commissioner, the department of children

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1 and families or its designee, whichever is appropriate, is prohibited from disbursing
2 the obligor's state tax refund or credit. A circuit court commissioner may conduct the
3 hearing. The sole issues at that hearing shall be whether the obligor owes the
4 amount certified and, if not and it is a support or maintenance order, whether the
5 money withheld from a tax refund or credit shall be paid to the obligor or held for
6 future support or maintenance, except that the obligor's ability to pay shall also be
7 an issue at the hearing if the obligation relates to an order under s. [✓]767.804 (3) (d)
8 1., 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that the court found
9 that the obligor's income was at or below the poverty line established under 42 USC
10 9902 (2).

History: 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 421; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105; 2005 a. 22, 25, 304; 2005 a. 443 s. 265; 2007 a. 20 ss. 1711 to 1718, 9121 (6) (a); 2007 a. 96; 2009 a. 113, 180.

11 **SECTION 1. 49.855 (4m) (b)** of the statutes is amended to read:

12 49.855 (4m) (b) The department of revenue may provide a certification that it
13 receives under sub. (1), (2m), (2p), or (2r) to the department of administration. Upon
14 receipt of the certification, the department of administration shall determine
15 whether the obligor is a vendor or is receiving any other payments from this state,
16 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
17 45.40 (1m), this chapter, or ch. 46, 108, or 301. If the department of administration
18 determines that the obligor is a vendor or is receiving payments from this state,
19 except for wages, retirement benefits, or assistance under s. 45.352, 1971 stats., s.
20 45.40 (1m), this chapter, or ch. 46, 108, or 301, it shall begin to withhold the amount
21 certified from those payments and shall notify the obligor that the state intends to
22 reduce any payments due the obligor by the amount the obligor is delinquent under
23 the support, maintenance, or receiving and disbursing fee order or obligation, by the
24 outstanding amount for past support, medical expenses, or birth expenses under the



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1 court order, or by the amount due under s. 46.10 (4), 49.345 (4), or 301.12 (4). The
2 notice shall provide that within 20 days after receipt of the notice the obligor may
3 request a hearing before the circuit court rendering the order under which the
4 obligation arose. An obligor may, within 20 days after receiving notice, request a
5 hearing under this paragraph. Within 10 days after receiving a request for hearing
6 under this paragraph, the court shall set the matter for hearing. A circuit court
7 commissioner may conduct the hearing. Pending further order by the court or circuit
8 court commissioner, the department of children and families or its designee,
9 whichever is appropriate, may not disburse the payments withheld from the obligor.
10 The sole issues at the hearing are whether the obligor owes the amount certified and,
11 if not and it is a support or maintenance order, whether the money withheld shall be
12 paid to the obligor or held for future support or maintenance, except that the obligor's
13 ability to pay is also an issue at the hearing if the obligation relates to an order under
14 s. 767.804 (3) (d) 1. [✓] 767.805 (4) (d) 1., or 767.89 (3) (e) 1. and the order specifies that
15 the court found that the obligor's income was at or below the poverty line established
16 under 42 USC 9902 (2).

History: 1981 c. 20, 391; 1983 a. 27; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 421; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16, 481; 1995 a. 27 s. 9126 (19); 1995 a. 201, 227, 279; 1995 a. 404 ss. 50 to 59; Stats. 1995 s. 49.855; 1997 a. 3, 27, 35, 237, 252; 1999 a. 9, 32; 2001 a. 16, 61, 105; 2005 a. 22, 25, 304; 2005 a. 443 s. 265; 2007 a. 20 ss. 1711 to 1718, 9121 (6) (a); 2007 a. 96; 2009 a. 113, 180.

(END OF INSERT 10-15)

INSERT 18-7

auto ref A (see p. 7 of inserts) 183

17 **SECTION 2.** 767.80 (5m) of the statutes, as affected by 2009 Wisconsin Act 321, [✓]
18 is amended to read:

19 767.80 (5m) APPLICABLE PROCEDURE; EXCEPTIONS. Except as provided in ss.
20 767.804, 767.805, 767.863 (3), 767.85, 767.893 (2) and (2m), and 769.401, unless a
21 male is presumed the child's father under s. 891.41 (1), is adjudicated the child's

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1 father either under s. 767.89 or by final order or judgment of a court of competent
2 jurisdiction in another state, is conclusively determined to be the child's father from
3 genetic test results under s. 767.804,[✓] or has acknowledged himself to be the child's
4 father under s. 767.805 (1) or a substantially similar law of another state, no order
5 or temporary order may be entered for child support, legal custody, or physical
6 placement until the male is adjudicated the father using the procedure set forth in
7 this subchapter, except s. 767.804 or[✓] 767.805. Except as provided in ss. 767.804,[✓]
8 767.805, 767.85, and 769.401, the exclusive procedure for establishment of child
9 support obligations, legal custody, or physical placement rights for a male who is not
10 presumed the child's father under s. 891.41 (1), adjudicated the father, conclusively[✓]
11 determined to be the child's father from genetic test results under s. 767.804,[✓] or
12 acknowledged under s. 767.805 (1) or a substantially similar law of another state to
13 be the father is by an action under this subchapter, except s. 767.804 or[✓] 767.805, or
14 under s. 769.402.[✓] No person may waive the use of this procedure. If a presumption
15 under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the
16 presumption.

NOTE: NOTE: Sub. (5m) is amended by 2009 Wis. Act 321 effective the date stated in the notice published in the Wisconsin Administrative Register under s. 769.504 to read: NOTE:

(5m) APPLICABLE PROCEDURE EXCEPTIONS. Except as provided in ss. 767.805, 767.863 (3), 767.85, 767.893 (2) and (2m), and 769.401, unless a male is presumed the child's father under s. 891.41 (1), is adjudicated the child's father either under s. 767.89 or by final order or judgment of a court of competent jurisdiction in another state, or has acknowledged himself to be the child's father under s. 767.805 (1) or a substantially similar law of another state, no order or temporary order may be entered for child support, legal custody, or physical placement until the male is adjudicated the father using the procedure set forth in this subchapter, except s. 767.805. Except as provided in ss. 767.805, 767.85, and 769.401, the exclusive procedure for establishment of child support obligations, legal custody, or physical placement rights for a male who is not presumed the child's father under s. 891.41 (1), adjudicated the father, or acknowledged under s. 767.805 (1) or a substantially similar law of another state to be the father is by an action under this subchapter, except s. 767.805, or under s. 769.402. No person may waive the use of this procedure. If a presumption under s. 891.41 (1) exists, a party denying paternity has the burden of rebutting the presumption.

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 68, 100, 201, 275, 404; 1997 a. 191; 1999 a. 9; 2001 a. 61; 2005 a. 428 ss. 12, 184, 241; Stats. 2005 s. 767.80; 2007 a. 97; 2009 a. 321.

SECTION 3. 767.80 (6m) of the statutes is amended to read:

767.80 (6m) WHEN ACTION MUST BE COMMENCED. The attorney designated under sub. (6) (a) shall commence an action under this section on behalf of the state within 6 months after receiving notification under s. 69.03 (15) that no father is named on the birth certificate of a child who is a resident of the county if paternity has not been

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1 conclusively determined from genetic test results under s. 767.804, ✓ acknowledged
2 under s. 767.805 (1) or a substantially similar law of another state, ✓ or adjudicated,
3 except in situations under s. 69.14 (1) (g) and (h) and as provided by the department
4 by rule.

History: 1979 c. 352; 1981 c. 20 s. 2202 (20) (m); 1983 a. 447; 1985 a. 29; 1987 a. 27, 355, 399, 413; 1989 a. 31, 212; 1993 a. 326, 481; 1995 a. 27 s. 9126 (19); 1995 a. 68, 100, 201, 275, 404; 1997 a. 191; 1999 a. 9; 2001 a. 61; 2005 a. 443 ss. 12, 184, 241; Stats. 2005 s. 767.80; 2007 a. 97; 2009 a. 321.

(END OF INSERT 18-7)

INSERT 18-12

5 *NOT* effective on the date on which the report under par. ✓ (c) is submitted to the state
6 registrar and which shall be *NO* ✓

(END OF INSERT 18-12)

INSERT 23-7

7 **SECTION 4.** 767.855 of the statutes is renumbered ✓ 767.855 (intro.) and amended
8 to read:

9 **767.855 Dismissal if adjudication not in child's best interest.** ✓ (intro.)

10 Except as provided in s. 767.863 (1m), at any time in an action to establish the
11 paternity of a child, upon the motion of a party or guardian ad litem, the court or
12 supplemental court commissioner under s. 757.675 (2) (g) may, with respect to a
13 male, ~~refuse to order genetic tests, if genetic tests have not yet been taken, and~~
14 ~~dismiss the action~~ do any of the following ✓ if the court or supplemental court
15 commissioner determines that a judicial determination of whether the male is the
16 father of the child is not in the best interest of the child. ✓

History: 1997 a. 191; 2001 a. 61; 2005 a. 443 s. 202; Stats. 2005 s. 767.855.

17 **SECTION 5.** 767.855 (1) of the statutes is created to read:

18 **767.855 (1)** Refuse to order genetic tests. ✓

19 **SECTION 6.** 767.855 (2) ✓ of the statutes is created to read:



ins 23-7 contd

1 767.855 (2) Dismiss the action, regardless of whether genetic tests have been
2 performed or what the results of the tests, if performed, were.✓

(END OF INSERT 23-7)

INSERT 25-17

3 SECTION 7. 938.396 (2g) (g)✓ of the statutes is amended to read:

4 938.396 (2g) (g) *Paternity of juvenile*. Upon request of a court having
5 jurisdiction over actions affecting the family, an attorney responsible for support
6 enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch.
7 IX of ch. 767, the party's attorney or the guardian ad litem for the juvenile who is the
8 subject of that proceeding to review or be provided with information from the records
9 of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating
10 to the paternity of a juvenile for the purpose of determining the paternity of the
11 juvenile or for the purpose of rebutting the presumption of paternity under s.
12 891.405, 891.407✓, or 891.41, the court assigned to exercise jurisdiction under this
13 chapter and ch. 48 shall open for inspection by the requester its records relating to
14 the paternity of the juvenile or disclose to the requester those records.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; s. 13.92 (2) (i).

(END OF INSERT 25-17)

INSERT 26-7

15 SECTION 8. **Effective dates.** This act takes effect on the first day of the 6th✓
16 month beginning after publication, except as follows:

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(1) The treatment of section 767.80[✓](5m) (by SECTION ~~X~~[✓]) of the statutes takes
effect on ^{the} ~~^~~ date stated in the notice published in the [✓] Wisconsin Administrative
Register under section 769.904[✓] of the statutes.

(END OF INSERT 26-7)

see p. 29 insert 26